

GUY M. WILLIS

IBLA 77-247

Decided June 10, 1977

Appeal from a portion of a decision of New Mexico State Office, Bureau of Land Management, requesting additional rent prior to issuance of noncompetitive oil and gas lease NM 28727.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

APPEARANCES: Guy M. Willis, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Guy M. Willis appeals from a portion of a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 3, 1977, requiring payment of the advance annual first-year's rental on noncompetitive oil and gas lease NM 28727 so as to comply with the requirement of \$1 per acre imposed by 43 CFR 3103.3-2, effective February 1, 1977, 42 F.R. 1032. On August 23, 1976, appellant had paid \$188, the correct amount at \$.50 per acre the rate used prior to the increase. Computed at the new rate, the rental for the 335.40 acre lease is \$336 leaving a balance due of \$148.

In his statement of reasons, appellant objects to the fact that the rent was increased and basis his appeal on the following:

The Offer to Lease and Lease for Oil and Gas Form 3120-3 revised September 1968 was timely filed August 23, 1976 in the Bureau office, Santa Fe, New Mexico.

At that time existing regulations as to rentals due the U.S. were met by the payment of \$188.00. It is not the fault of offeror that the Bureau was unable to process and complete this offer to lease prior to February 1, 1977. It is unjust discrimination to make offeror pay \$1.00 per acre rental when many other offers to lease, filed even after the date of this filing, had to pay only .50 [cents] per acre rental. Further, it is unjust that offers to lease filed prior to the date of such change in regulations should be subject to change in rental rate.

It is the contention of offeror that all applications to lease filed prior to February 1, 1977 should be honored at the rate of .50 [cents] per acre regardless of the date the lease becomes effective. In the alternative, effective date of lease should be prior to February 1, 1977.

[1] Although appellant was not cause for the delay in issuance of the lease, the fact remains that as of February 1, 1977, a lease had not issued at the old rate. If the lease is to issue after that date it must be issued at the increased rental rate. Milton J. Lebsack, 29 IBLA 316 (1977). We do not find this action discriminatory. When the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases after a specific date, such increased rate is applicable to all leases issued subsequent to that date even though the offer was filed prior to the date of the regulation and other leases, filed after his were issued at the lower rate. Jary J. Hunnicutt, 30 IBLA 86 (1977).

Appellant's argument that it is unfair to apply the regulation to offers filed prior to the effective date of the amendment has been presented to the Board in other cases. In Raymond N. Joeckel, 29 IBLA 170 (1977) and Milton J. Lebsack, supra, decisions containing thorough discussions of the applicable law, the Board held that a lease granted after February 1, 1977, must be at the rate provided for in 43 CFR 3103.3-2. In Raymond N. Joeckel, 30 IBLA 32 (1977) the Board responded to this argument by quoting a letter from the Secretary of the Interior as cited in Lebsack, supra:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977

have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [1/]

Accordingly, we find that the \$1 per acre rate must be imposed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

1/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

